

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KORRELL SANTANA COLE,

Plaintiff,

v.

SOTO, et al.,

Defendants.

No. 1:25-cv-00460 KES GSA (PC)

ORDER ACKNOWLEDGING PLAINTIFF'S  
NOTICE OF VOLUNTARY DISMISSAL OF  
THIS MATTER

(See ECF No. 14)

ORDER DIRECTING CLERK OF COURT TO  
CLOSE THIS CASE, CONSISTENT WITH  
PLAINTIFF'S NOTICE

Fed. R. Civ. P. 41(a)(1)(A)(i)

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 29, 2025, the Court ordered Plaintiff to show cause why his application to proceed *in forma pauperis* should not be denied and why this matter should not be closed for failure to exhaust administrative remedies. ECF No. 13.

On May 15, 2025, Plaintiff filed a notice to voluntarily dismiss this matter. ECF No. 14. For the reasons stated below, the Court will acknowledge Plaintiff's notice and consistent with it, the Court will direct the Clerk of Court to close this case.

1 I. RELEVANT FACTS

2 On April 22, 2025, Plaintiff's complaint was docketed along with his application to  
3 proceed in forma pauperis. ECF Nos. 1, 2.

4 On April 29, 2025, the Court ordered Plaintiff to show cause why his application to  
5 proceed in forma pauperis should not be denied and why this matter should not be closed for  
6 failure to exhaust administrative remedies. ECF No. 13.

7 As the Court explained, the complaint reflects that when Plaintiff was asked whether there  
8 are any grievance procedures available at CSATF, in both Claim One and Claim Two, Plaintiff  
9 checked both the Yes and No boxes and writes that *legitimate procedures unavailable*. See ECF  
10 No. 1 at 3, 10. When then asked if he submitted his appeal for each claim to the highest level, his  
11 response in both Claims was "Yes." However, when then asked if he did not submit an appeal or  
12 a request for administrative relief at any level, why he did not do so, in Claim One, Plaintiff  
13 responds, "And [sic] emergency appeals filed due to imminent threat to safety." Id. at 3 (brackets  
14 added) (error in original). Plaintiff did not provide an answer to this question in Claim Two. See  
15 id. at 10.

16 As the Court further explained, the complaint clearly shows that Plaintiff's claims of  
17 constitutional violation of right stem from the fact that on either April 15th or April 16th of 2025,  
18 after he had filed grievances related to CSATF prison officials denying certain ADA-status  
19 inmates incontinent showers, Plaintiff was moved from a single cell to a double cell. The  
20 complaint also shows that on April 22, 2025, Plaintiff purportedly signed the complaint and sent  
21 it to the Court for filing. See ECF No. 1 at 14 (signature date of complaint). Interestingly, the  
22 complaint was also filed with the Court on that same date, April 22, 2025.

23 The Court further explained that, given these findings, it is clear on the face of the  
24 complaint that Plaintiff did not exhaust his administrative remedies, that he has not provided a  
25 viable excuse under Ross to excuse that failure, and that his complaint must be summarily  
26 dismissed.

27 Thus, on April 29, 2025, Plaintiff was ordered to show cause and was given 14 days to  
28 respond. Id. On May 15, 2025, Plaintiff filed a notice to voluntarily dismiss this matter. ECF

No. 14.

## II. DISCUSSION

In the notice, Plaintiff states that he would like the Court to dismiss this case without prejudice and provides some contextual information on his reasoning. Plaintiff explains that he did not receive the Court’s April 29, 2025 order to show cause until May 6, 2025, and due to a modified lockdown he was unable to do research or rebut the Court’s recommendation—ostensibly regarding exhaustion of administrative remedies—in a timely effective manner. ECF No. 14 at 2. Thus, Plaintiff explains that he is choosing to voluntarily dismiss in order to cure the deficiencies in a new petition. Id. Plaintiff attaches a “Daily Program Status Report” (Id. at 6) which he states establishes his lack of access to a law library. Id. at 2.

Plaintiff further explains that—for the record—he believes the Court erred in refusing to recognize an irreparable injury exception to the PLRA because he clearly explained there was an imminent threat to his personal safety and that he was facing irreparable harm and imminent retaliation. Id. Finally, Plaintiff explains as follows:

Corcoran ‘SATF’s’ grievance process is not capable of use to obtain relief because it operates as a simple dead end with the office of grievances consistently unwilling to provide any relief to aggrieved prisoners, and prison administrators thwart IPS from utilizing it through intimidation and misrepresentation. My grievance filings include many administrative dispositions that show that the office of grievances routinely dismiss and mishandle my complaints by refusing to investigate them and improperly screening them out as duplicates, inclusively denying each and every American Disabilities Act reasonable accommodation request I ever filed. This is being done by machination. There is no remedy, the prison will not provide a remedy. 5. I still face an imminent threat to my health and safety and I cannot defend myself due to my physical limitations/disability. The issue is ongoing. But it is obvious that the Magistrate gives my situation no heed. Id. at 3.

As discussed above, Plaintiff clearly expressed his desire to voluntarily dismiss the matter to allow him “to cure the deficiencies in a new petition”. Accordingly, the notice of voluntary dismissal will be construed as such. The Court will not analyze or otherwise address the additional statements and arguments quoted above as Plaintiff does not request such be done.

Federal Rule of Civil Procedure 41 permits a plaintiff to voluntarily dismiss a case

1 without a court order if an opposing party has not yet served an answer or a motion for summary  
2 judgment. See Fed. R. Civ. P. 41(a)(1)(A)(i). Given that this case has not yet been screened,  
3 Plaintiff's notice that he would like to dismiss this case is permitted under the rule. The Court  
4 acknowledges this herein and consistent with Plaintiff's notice it will direct that the Clerk of  
5 Court close this case.  
6

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The Court herein ACKNOWLEDGES Plaintiff's notice of voluntary dismissal (ECF  
9 No. 14). See Fed. R. Civ. P. 41(a)(1)(A)(i),
- 10 2. The case will be dismissed without prejudice, and
- 11 3. Consistent with Plaintiff's notice of voluntary dismissal (ECF No. 14), the Clerk of  
12 Court shall CLOSE this case.

13  
14 IT IS SO ORDERED.

15 Dated: May 16, 2025

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE